

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MEINEKE FRANCHISOR SPV, LLC,

Plaintiff,

v.

CALM 3322, INC.; CALM 4839, INC.;
CHARLES OLSON; MIDTOWN
AUTOMOTIVE SERVICE AND
EXHAUST, INC.; and ELITE
AUTOMOTIVE SERVICE AND
EXHAUST, INC.,

Defendants.

8:18CV433

**ORDER APPROVING
STIPULATED
PERMANENT INJUNCTION**

This matter is before the Court on a Joint Motion for Entry of Stipulated Permanent Injunction (Filing No. 32) filed by plaintiff Meineke Franchisor SPV, LLC (“Meineke”),¹ and defendants CALM 3322, Inc., CALM 4839, Inc., Charles Olson, Midtown Automotive Service and Exhaust, Inc., and Elite Automotive Service and Exhaust, Inc. (collectively, “defendants”). Having carefully reviewed this motion and the record in this case, and in accordance with the parties’ stipulations, the Court finds as follows:

1. Meineke filed this action seeking a Preliminary Injunction (Filing No. 8) to enjoin the defendants from (1) operating two automotive maintenance and repair centers (“repair centers”) from the locations where they previously operated two Meineke repair centers, in violation of their written agreements not to compete with Meineke, and (2) continuing to use Meineke’s confidential and proprietary materials, trade dress, and telephone numbers.

¹Meineke is the successor-in-interest to Meineke Car Care Centers, LLC, which is the successor-in-interest to Meineke Discount Muffler Shops, Inc.

2. Meineke franchises its repair centers, and the defendants are two former Meineke franchisees, the individual owner and operator of the former franchisees, and their affiliated entities.

3. Permanent injunctive relief is warranted under Federal Rule of Civil Procedure 65 against the defendants, jointly and severally, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this injunction by personal service or otherwise (“enjoined parties”).

4. The enjoined parties are:

A. Enjoined from owning, operating, or participating in, directly or indirectly, repair centers (1) at the addresses of 4389 North 90th Street in Omaha, Nebraska, 68134, and 3322 Leavenworth Street in Omaha, Nebraska, 68105 (collectively, “Centers”), (2) within a six-mile radius of the Centers, or (3) within a six-mile radius of any Meineke franchise location in existence as of November 30, 2018, for a period of two years beginning on November 30, 2018.

B. Enjoined from advertising, displaying, distributing, promoting, selling, or using any product or service bearing any of Meineke’s distinctive color schemes, logos, and symbols, including its trademarks, service marks, and trade dress to identify the source, origin, and sponsorship of Meineke’s system’s facilities and services publicized throughout the United States, including Meineke’s name and logo “Meineke Car Care Center,” registered with the U.S. Patent and Trademark Office at Numbers 78705702, 78705286, 78437010, and 76563372 (the “Meineke Marks”) or any colorable intimation thereof.

- C. Enjoined from displaying or using any of the Meineke Marks to advertise, identify, promote, or sell any product or service or any of their businesses.
- D. Enjoined from directly or indirectly making or allowing to be made any statement or representation or performing any act likely to lead the public to believe the defendants, their business operations, or their products and services are directly or indirectly associated with, affiliated with, connected to, licensed by, sponsored by, authorized by, or approved by Meineke.
- E. Directed to recall and deliver to Meineke all advertising, promotional products, displays, point of purchase materials, signs, banners, labeling, packaging, and all other products which bear or reference any of the Meineke Marks or any colorable intimation thereof.
- F. Directed to immediately notify the telephone company and all telephone-directory publishers of the termination of the defendants' rights to use the telephone numbers (402) 342-6220 and (402) 571-0944 ("telephone numbers"), transfer defendants' rights to all regular, classified, and other telephone-directory listings associated with Meineke, and authorize the transfer of the telephone numbers to Meineke.
- G. Directed to notify in writing each former landlord of the Centers, that those former landlords have no rights in or to any trademarks, service marks, trade dress, color scheme, or other indicia related to the former operation of Meineke franchises at the Centers and requesting that those former landlords complete any and all changes, modifications, or other actions necessary to distinguish the Centers' premises from

their appearance as Meineke franchise locations within thirty days of the entry of this Order Approving Stipulated Permanent Injunction (“this Order”).

H. Required to, upon written request by Meineke, file with the Court and serve upon Meineke a written statement under oath setting forth in detail the manner in which the defendants have complied with this Order within ten days of such request.

4. This Order is binding and enforceable by citation of contempt of court. All proceedings relating to enforcement or compliance with this Order’s terms shall be brought before this Court, which retains jurisdiction to enforce this Order.

5. This Order is based on the parties’ agreement and stipulation, and the parties have waived any right to appeal and to the inclusion of findings of fact and conclusion of law. *See Fed. R. Civ. P. 52, 65.* The parties agree that this Order is entered under Rule 65 and constitutes the entry, without further notice, of a final judgment in this matter.

6. Because the parties’ Joint Motion for Entry of Stipulated Permanent Injunction (Filing No. 32) is granted, Meineke’s pending Motion for Preliminary Injunction (Filing No. 8) is denied as moot.

IT IS SO ORDERED.

Dated this 25th day of January 2019.

BY THE COURT:

Robert F. Rossiter, Jr.
United States District Judge